

### **REMARKS**

The Office Action dated October 16, 2007 has been received and carefully noted. The above amendments to the abstract and claims, and the following remarks, are submitted as a full and complete response thereto.

Claims 1-22 are pending in the application. Claims 1-7, 9-17, and 19-20 have been amended to more particularly point out and distinctly claim the subject matter of the invention. Claims 21-22 have been added. No new matter is added. Applicant submits the pending claims for consideration in view of the following.

The Office Action objected to the Abstract for using “said” in line 4, 5, and 7, and for using “present invention” in line 1. Additionally, the Office Action objected to the Abstract for exceeding 150 words. As presented above, Applicant has amended the Abstract to comply with these requirements. Accordingly, Applicant respectfully requests that the objection to the Abstract be withdrawn.

Additionally, the Office Action objected to claims 9 and 19 for not reciting an antecedent basis for “said network element.” Similarly, the Office Action objected to claims 10 and 20 for reciting “a charging policy” and “a network element” when these limitations were previously presented. As presented above, Applicant has amended claims 9-10, and 19-20 to overcome these objections. Therefore, Applicant respectfully requests that the objection to these claims 9-10, and 19-20 be withdrawn.

Claims 1-2, 6-8, 11-12, and 16-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schweitzer et al. (US 2002/0013849 A1) in view of Jogalekar (US

7,002,977). The Office Action stated that Schweitzer fails to disclose or suggest, enforcing a charging policy at the network element and observing said data reaching said network element. To account for the deficiencies of Schweitzer, the Office Action relied upon Jogalekar. This rejection is traversed as follows.

Claim 1, upon which claims 2-8 depend, is generally directed toward a method that includes charging of data reaching a network element of a communication network during a data session. The data session includes a plurality of data flows, each being distinguishable by a set of flow parameters. The charging of data includes enforcing a charging policy at the network element to be applied to the data. The charging policy defines charging rules per flow. The charging of data also includes observing the data reaching the network element and detecting at least one flow of data, matching the detected flow of data to an enforced charging policy, and applying the enforced charging policy to the data flow, thereby generating charging information.

Claim 9, upon which claim 10 depends, is generally directed to a method that includes supplying a network element with a charging policy to be enforced at the network element for charging of data reaching the network element of a communication network during a data session. The supplying of a network element with a charging policy includes creating a plurality of charging policies. Each charging policy includes a flow parameter and at least one of a charging/accounting type, an accounting event trigger, a charging metrics, and a tariffing indication. The supplying of a network element with a charging policy also includes selecting a charging policy based on offered

services and subscriber information and distributing the selected charging policy to at least one network element.

Claim 11, upon which claims 12-18 depend, is generally directed to a device that includes an enforcing unit configured to enforce a charging policy at a network element to be applied to data. The charging policy defines charging rules per data flow. The device also includes an observation unit configured to observe the data reaching the network element and detect at least one flow of data and a matching unit configured to match the detected flow of data to an enforced charging policy. The device further includes an application unit configured to apply the enforced charging policy to the flow and a generation unit, responsive to the application unit, configured to generate charging information. The device is configured to charge data reaching the network element of a communication network during a data session, the data session comprising a plurality of data flows, with each data flow of the plurality of data flows being distinguishable by a set of flow parameters.

Claim 19, upon which claim 20 depends, is generally directed to a device that includes a creation unit configured to create a plurality of charging policies. Each charging policy includes at least one flow parameter and at least one of a charging/accounting type, an accounting event trigger, a charging metrics, and a tariffing indication. The device also includes a selection unit configured to select a charging policy based on offered services and subscriber information and a distribution unit configured to distribute the selected charging policy to at least one network element. The

device is configured to supply the at least one network element with the charging policy to be enforced at the network element for charging of data reaching the network element of a communication network during a data session.

Claim 21 is generally directed to a device that includes an enforcing means configured to enforce a charging policy at the network element to be applied to data. The charging policy defines charging rules per data flow. The device also includes an observation means configured to observe the data reaching the network element and detect at least one flow of data and a matching means configured to match the detected flow of data to an enforced charging policy. The device further includes an application means configured to apply the enforced charging policy to the flow and a generation means, responsive to the application means, configured to generate charging information.

Claim 22 is generally directed to a device that includes a creation means configured to create a plurality of charging policies. Each of the charging policies includes at least one flow parameter and at least one of a charging/accounting type, an accounting event trigger, a charging metrics, and a tariffing indication. The device also includes selection means configured to select a charging policy based on offered services and subscriber information and a distribution means configured to distribute the selected charging policy to at least one network element.

Each of the foregoing claims recites limitations that are not disclosed or suggested by a combination of Schweitzer and Jogalekar.

Schweitzer generally discloses a method for policy-based billing in a network architecture. In Schweitzer, packet sources provide data packets to a filter. The filter is provided to filter out certain packets such as exclusively local packets. An analyzer analyzes the filtered packets to assign the packets to flows and then to sessions. The analyzer can also gather statistics about the flows and session for and provide the statistics to a data collector. The filter, analyzer, and data collector have access to a policy that controls how the system operates to execute policy-based billing.

Jogalekar generally discloses a system and method for policy based accounting and billing for network services. In one embodiment of Jogalekar, a packet forwarding device receives a packet to be forwarded over the network, accesses a policy table to identify a billing party associated with the packet, obtains billing information, and stores a record of the forwarded packet and the associated billing party.

However, a combination of Schweitzer and Jogalekar fails to disclose or suggest, at least, “charging of data reaching a network element of a communication network during a data session, the data session comprising a plurality of data flows, with each data flow being distinguishable by a set of flow parameters,” as recited in claim 1.

Instead, referring to the Schweitzer Abstract, Schweitzer is concerned with policy-based billing in a network architecture. In Schweitzer, sessions on a network are reconstructed and quality of service is monitored at an application level as well as for understanding application specific events. This enables generation of service detail

records for billing based on application type. Additionally, this enables the qualitative and quantitative analysis of quality of service based on application specific parameters.

Referring to Schweitzer at Figure 1 and paragraphs 38-43, Schweitzer discloses a system for providing policy based session management and monitoring. To do this, packets are filtered by a filter 102 and assigned to flows, and then to sessions by an analyzer 104. The filtered and analyzed packets are output from the packet sources 100a – 100e which may be network connection, local computers, network computer, the Internet, and so on. The filter 102, the analyzer 104 and a data collector are capable of accessing a policy 114 which may control how users or groups are billed for usage. As such, Schweitzer discloses enforcing a charging policy by way of a system, to which session data flows are guided.

However, Schweitzer does not disclose a charging policy that is enforced and applied on a network element basis such that a network element reached by data of the data flow, during a data session, can apply a respective charging policy. Indeed, Schweitzer fails to disclose or suggest, at least, “charging of data reaching a network element of a communication network during a data session, the data session comprising a plurality of data flows, with each data flow being distinguishable by a set of flow parameters” as recited in claim 1.

Similarly, Jogalekar fails to account for the deficiencies of Schweitzer. Instead, Jogalekar discloses a method for policy based accounting and billing for network services without regard to sessions or a charging policy that is enforced and applied on a network

element basis such that a network element reached by data of the data flow, during a data session, can apply a respective charging policy. As such, Jogalekar, similar to Schweitzer, fails to disclose or suggest, at least, “charging of data reaching a network element of a communication network during a data session, the data session comprising a plurality of data flows, with each data flow being distinguishable by a set of flow parameters,” as recited in claim 1. Therefore, a combination of Schweitzer and Jogalekar fails to disclose or suggest all the limitations of claim 1.

Additionally, the combination of Schweitzer and Jogalekar proposed by the Office Action is improper. Schweitzer discloses a method for reconstructing session on a network to monitor quality of service at an application level, understand application specific events, and generate service detail records. Conversely, Jogalekar discloses a method of billing for network services based on receiving a packet, determining a policy that corresponds to the packet, recording network usage information evidenced by the packet, and formulating a billing record for a customer associated with the packet. In light of the distinct problems, mode of operation, and benefits between Schweitzer and Jogalekar, one skilled in the art would not be motivated to combine Schweitzer and Jogalekar as proposed by the Office Action.

Furthermore, the Office Action failed to make a *prima facie* case for obviousness. Regarding the motivation to combine Schweitzer and Jogalekar, the Office Action stated that it would have been obvious to one skilled in the art at the time of the invention to modify the system of Schweitzer by using the features, as taught by Jogalekar “in order to

provide ... (see column 5 lines 58-64).” Due to the unorthodox flow of claim analysis presented in the Office Action, Applicant must assume that “(see column 5 lines 58-64)” refers to Jogalekar, as the aforementioned motivation assertion was presented as part of a paragraph discussing the disclosure of Jogalekar.

This portion of Jogalekar states that those skilled in the art would appreciate that the packet forwarding device of Jogalekar may include line cards and a common controller that performs MPLS tunneling, routing, statistical information collection and storage. Clearly, this does not amount to a legal or practical motivation for combining Schweitzer and Jogalekar. MPEP §2142 states that, “The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” MPEP § 2141 states that, “The key to supporting any rejection under 35 U.S.C. §103 is the clear articulation of the reason(s) why the claimed invention would have been obvious” and that “rejections on obviousness cannot be sustained by mere conclusory statements.” Therefore, the Office Action failed to make a *prima facie* case for obviousness because the Office Action did not set forth a clear, non-conclusory, articulation of the reasons why the claims would have been obvious.

In light of the above, Applicant respectfully requests that the §103(a) rejection of claim 1 be withdrawn. Similarly, Applicant respectfully requests that the §103(a) rejection of claim 11 be withdrawn as claim 11 recites limitations similar to those of claim 1, though each claim has its own scope. Additionally, Applicant respectfully requests that the §103(a) rejection of claims 2, 6-8, 12, and 16-18 be withdrawn for at



least their dependency from claims 1 and 11. Furthermore, Applicant respectfully asserts that claims 21-22 are allowable for at least the reasons set forth above.

Claims 3 and 13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schweitzer in view of Jogalekar, and further in view of Gai et al. (US 7,185,073). The Office Action took the position that Schweitzer and Jogalekar fail to disclose the limitations specifically recited in claims 3 and 13, but relies on Gai to account for the deficiencies of Schweitzer and Jogalekar. As claims 3 and 13 depend from allowable claims 1 and 11, Applicants respectfully request that the §103(a) rejection to claims 3 and 13 be withdrawn.

Claims 4-5 and 14-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schweitzer and Jogalekar in view of Amin et al. (US 2002/0152319). The Office Action acknowledged that Schweitzer and Jogalekar fail to disclose the limitations specific to claims 4 and 14, from which claims 5 and 15 depend. To support the rejection, the Office Action relied upon Amin. As claims 4-5 and 14-15 depend from claims 1 and 11, Applicant respectfully requests that the §103(a) rejection to claims 4-5 and 14-15 be withdrawn.

Claims 9 and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jogalekar in view of Schweitzer. On page 14, the Office Action mentions “Barabash” without reference or context. Because “Barabash” does not include a citation, is not mentioned elsewhere in the Office Action comments, and is not referenced in Notice of

References Cited, Applicant must assume that the mention of “Barbash” on page 14 was an oversight.

As presented above, Schweitzer and Jogalekar fail to disclose or suggest, at least, “supplying a network element with a charging policy to be enforced at said network element for charging of data reaching said network element of a communication network during a data session,” as recited in claim 1. Claim 9, similar to claim 1, recites “supplying a network element with a charging policy to be enforced at said network element for charging of data reaching said network element of a communication network during a data session.” Claim 19 recites analogous limitations. Therefore, Applicant respectfully requests that the §103(a) rejection of claims 9 and 19 be withdrawn for at least the reasons set forth above with respect to claim 1.

Claims 10 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jogalekar and Schweitzer in view of Hurtt et al. (US 2006/0058006). The Office Action acknowledged that Jogalekar and Schweitzer are silent regarding a charging policy that is selected for a type of network element. However, the Office Action alleged that Hurtt disclosed such limitations. In light of the allowable status of claims 9 and 19, from which claims 10 and 20 depend, Applicant respectfully requests that the §103(a) rejection of claims 10 and 20 be withdrawn.

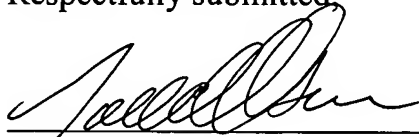
If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by

telephone, the applicants' undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

The foregoing comments made with respect to the positions presented in the Office Action are not to be construed as acquiescence with other positions presented in the Office Action that have not been explicitly contested. Accordingly, the above arguments for patentability of a claim should not be construed as implying that there are not other valid reasons for patentability of the claim or other claims. Additionally, the Applicant does not acquiesce that the cited art anticipates or renders obvious any of the claims as previously presented, and reserve the right to pursue any of the previously presented claims in a subsequent application.

In the event this paper is not being timely filed, the applicants respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jared T. Olson', is written over a horizontal line.

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